

Remarks by David Marchick¹
Senator Baucus's Trade and Security Forum
April 3, 2006

Thank you for the opportunity to participate in this important forum. I would like to cover four issues.

First, it is in the United States' national security interest to encourage foreign direct investment. Today more than ever, foreign investment is crucial for the vibrancy and vitality of the U.S. economy.

Foreign investment is essential for job creation, innovation, research and development, and the strength of our manufacturing base. Foreign investors employ more than 5 million Americans and pay salaries and wages higher than the domestic average. Close to 20% of U.S. manufacturing GDP can be attributed to subsidiaries of foreign-owned firms. In some sectors in which the United States leads the world, such as the chemicals sector, foreign affiliates are responsible for almost 30% of the total value created in the United States. The stock of foreign direct investment in the United States has grown from \$185 billion in 1985 to more than \$1.5 trillion today. At the same time, the total stock of U.S. direct investment abroad exceeds \$2 trillion. Actions to restrict foreign investment in the United States could lead to retaliation against, or imitation that hurts, U.S. investors abroad.

Nevertheless, the levels of foreign investment in the United States remain relatively low compared to other major industrialized countries. We need more foreign investment, not less. Because of our current account deficit, the United States needs to import in excess of \$2 billion of capital per day. If the investment environment in the United States is hostile for foreign investment, investors will put their money, jobs and technology elsewhere.

Second, the CFIUS process:

The irony of the Dubai Ports World controversy is that it has created the conventional wisdom that transactions breeze through CFIUS. Nothing could be further from the truth.

Just because a transaction is approved in the first 30 days doesn't mean it received a cursory review. Just because the vast majority of cases are approved by CFIUS doesn't mean that the process isn't tough. And just because a process is confidential, it doesn't mean that it lacks credibility.

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Since September 11, 2001, CFIUS has applied greater scrutiny to foreign investments, has imposed even tougher requirements as a condition for approval, and has enhanced enforcement of security agreements negotiated through the Exon-Florio process.

The President and CFIUS should never sacrifice national security for economic policy interests. The fact remains, however, that most foreign investment in the United States creates absolutely no national security issues. For those investments that do raise national security concern, the Exon-Florio Amendment provides the President with a powerful tool to block investments or mitigate any security concerns.

Third issue: the global impact of Exon-Florio reforms.

Overdoing Exon-Florio reform could invite similar restrictions abroad. As we speak, Canada, Russia and France are each considering new restrictions on investment. The Russian economy minister recently justified their proposal to protect 39 industries on actions to restrict foreign investment in the United States. Recently, a major Indian telecommunications company, VSNL, was forced to accept extremely burdensome security conditions in order to obtain CFIUS approval for a transaction. What did it do? It wrote to the Indian government suggesting that “in the interests of a level competitive paying field as well as regulatory symmetry, a similar security agreement process should exist in India for U.S. and other foreign carriers who desire a license” in India. In turn, the Indian government issued draft regulations that would impose burdensome requirements on American companies investing in India. This is a classic example of “what comes around, goes around.” National security should not be used as a guise for protectionism.

Fourth, the Shelby/Sarbanes bill.

Senators Shelby and Sarbanes and their staffs, along with others on the committee, including Senators Hagel, Sununu, Dodd and Menendez, deserve enormous credit for producing a bipartisan bill in this highly politicized environment. The Shelby/Sarbanes bill makes a number of important improvements to CFIUS. It strengthens the membership in CFIUS by adding the DNI to the committee; updates the criteria CFIUS must consider in its national security evaluation; clarifies CFIUS’s enforcement powers; enhances protection of business proprietary information; and ensures that transactions withdrawn because of CFIUS scrutiny cannot escape CFIUS oversight. Senators Shelby and Sarbanes also deserve credit for resisting bad ideas like a Congressional veto and requiring CFIUS to evaluate an acquisitions impact on U.S. “economic security,” a thinly disguised form of protectionism. The Shelby/Sarbanes bill will also help restore Congressional confidence in CFIUS, giving CFIUS the freedom of action to make hard and politically unpopular decisions based on national security, not public opinion.

But many improvements can be made in the bill. Despite important changes in the bill from its original draft, it still creates risks for unnecessary delays. As Senator Bayh recently said, the process needs to be better, not longer. Further, while it is vital that Congress have more visibility into the CFIUS process, the notification and reporting

requirements are overbroad and burdensome. In my view, Congress would be better served in its important oversight role, and foreign investors would face less uncertainty, if the reporting requirements focused less on individual transactions and more on aggregate data. The Administration has admitted that mistakes, particularly with respect to communication with Congress, were made in the Dubai Ports world transaction. But excessive Congressional scrutiny of the CFIUS process will make CFIUS officials so gun shy or risk averse that transactions that should be approved will not get approved.

For example, the CFIUS agencies should issue regular reports to Congress regarding the number of cases filed, the sectors affected, the countries of origin of the investing parties, the number of withdrawals, and the number of proposed investments by foreign companies owned or controlled by foreign governments. Excessive focus on individual transactions creates risks of further politicization of the CFIUS process for competitive, as opposed to national security, reasons. Finally, I hope the Senate will strongly consider Senator Dodd's suggestion to an optional 30 days to the end of the investigation phase, as opposed to before it. As you know, most transactions can and should clear CFIUS within 30 days, particularly since quite a bit of work is done with CFIUS before the formal filing. Second, Senator Dodd made very strong arguments that the country classification provision in the Shelby/Sarbanes bill could create real foreign policy issues without advancing protection of national security.

Let me conclude by stressing the importance of maintaining an open investment environment in the United States. You have been a leader for more than 25 years in opening foreign markets for U.S. agricultural and manufacturing products, and your leadership in maintaining an open investment environment is just as important. Foreign investors exported more than \$150 billion of goods in 2003. Foreign investment drives trade, and more foreign investment will lead to more exports.

Without continuing and growing inflows of foreign investment, the U.S. manufacturing base, jobs, innovation and American competitiveness will be at risk. Unless the United States remains open to foreign investment, we will alienate our allies and diminish our diplomatic leverage. Unless the United States continues to welcome foreign investment, we could find ourselves more and more isolated in an increasingly interdependent world. Maintaining an open environment for investment is, in itself, deeply in the national security interest of the United States.

Thank you for the opportunity to participate with you today.